

WC 07-116

Arent Fox
ATTORNEYS AT LAW

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May 29, 2007

FCC/NELE/07
MAY 29 2007

HAND DELIVERED

Marlene H. Dortch, Secretary
Federal Communications Commission
Wireline Competition Bureau – CPD – 214 Appls.
P. O. Box 358145
Pittsburgh, PA 15251-5145

Re: Joint Application of DES Communications, Inc. and Sunesys, LLC

For Domestic Section 214 Authorization To Transfer Assets

WC Docket No. _____

Dear Ms. Dortch:

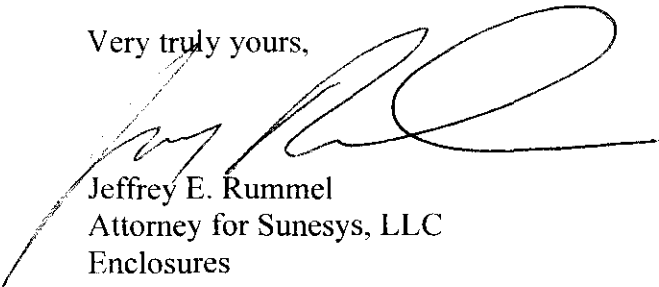
Transmitted herewith are an original and six (6) copies of the above-referenced Joint Application.

Also enclosed is a completed Fee Remittance Form 159 and a check in the amount of \$965.00 to cover the filing fee required for this Joint Application.

An additional copy of this filing is also enclosed, to be date-stamped and returned with the courier that is submitting this filing.

Should any questions arise with respect to this matter, please communicate directly with this office.

Very truly yours,


Jeffrey E. Rummel
Attorney for Sunesys, LLC
Enclosures

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB

3060-0589

Page 1 of 4

(1) LOCKBOX # 358145		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Arent Fox LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$965.00	
(4) STREET ADDRESS LINE NO. 1 1050 Connecticut Ave., NW			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20036
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-715-8479		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0005012497		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME Sunesys, LLC			
(14) STREET ADDRESS LINE NO. 1 202 Iitus Avenue			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Warrington		(17) STATE PA	(18) ZIP CODE 18976
(19) DAYTIME TELEPHONE NUMBER (include area code) (267) 927-2029		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0016325029		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$965.00	(27A) TOTAL FEE \$965.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Jeffrey Rummel</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>[Signature]</u>		DATE <u>5/29/07</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE (CONTINUATION SHEET) Page No <u>2</u> of <u>2</u>		SPECIAL USE
		FCC USE ONLY
USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT SECTION BB - ADDITIONAL APPLICANT INFORMATION		
(13) APPLICANT NAME DES Communications, Inc.		
(14) STREET ADDRESS LINE NO 1 600 Mifflin Road		
(15) STREET ADDRESS LINE NO. 2		
(16) CITY Pittsburgh	(17) STATE PA	(18) ZIP CODE 15207
(19) DAYTIME TELEPHONE NUMBER (include area code) 412-306-7307		(20) COUNTRY CODE (if not in U.S.A.)
FCC REGISTRATION NUMBER (FRN) REQUIRED		
(21) APPLICANT (FRN) 0008757502		(22) FCC USE ONLY
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE	(25A) QUANTITY
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE	FCC USE ONLY
(28A) FCC CODE 1		(29A) FCC CODE 2
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1		(29B) FCC CODE 2
(23C) CALL SIGN/OTHER ID	(24C) PAYMENT TYPE CODE	(25C) QUANTITY
(26C) FEE DUE FOR (PTC)	(27C) TOTAL FEE	FCC USE ONLY
(28C) FCC CODE 1		(29C) FCC CODE 2
(23D) CALL SIGN/OTHER ID	(24D) PAYMENT TYPE CODE	(25D) QUANTITY
(26D) FEE DUE FOR (PTC)	(27D) TOTAL FEE	FCC USE ONLY
(28D) FCC CODE 1		(29D) FCC CODE 2
(23E) CALL SIGN/OTHER ID	(24E) PAYMENT TYPE CODE	(25E) QUANTITY
(26E) FEE DUE FOR (PTC)	(27E) TOTAL FEE	FCC USE ONLY
(28E) FCC CODE 1		(29E) FCC CODE 2
(23F) CALL SIGN/OTHER ID	(24F) PAYMENT TYPE CODE	(25F) QUANTITY
(26F) FEE DUE FOR (PTC)	(27F) TOTAL FEE	FCC USE ONLY
(28F) FCC CODE 1		(29F) FCC CODE 2

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Joint Application of)	
)	
DES Communications, Inc.,)	
Transferor)	
)	
and)	WC Docket No. _____
)	
Sunesys, LLC)	
Transferee)	
)	
For Domestic Section 214 Authorization)	
To Transfer Assets)	
_____)	

JOINT APPLICATION
(STREAMLINED PROCESSING REQUESTED)

By this Joint Application, and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, Section 63.04 of the Federal Communications Commission (“Commission”) Rules, 47 C.F.R. § 63.04 and the Commission’s Report and Order issued in CC Docket No. 01-150,¹ DES Communications, Inc. (“DES”) and Sunesys, LLC (“Sunesys”) hereby request authorization for DES to transfer substantially all of its Pennsylvania assets, including its customer accounts and contracts, to Sunesys.² As explained herein, the Parties respectfully request that this Application be granted expeditiously in order to permit them to timely complete this transaction. In support of this Application, the Parties state as follows.

¹ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, CC Docket No. 01-150, 17 FCC Rcd 5517 (2002) (“Streamlining Order”).

² DES and Sunesys will be referred to collectively herein as the “Parties”.

I. INFORMATION REQUIRED BY SECTION 63.04

Applicants submit the following information in response to the requirements in Sections 63.03 and 63.04(a) of the Commission's Rules, 47 C.F.R. §§63.03 and 63.04(a):

Section 63.04(a)(1) – Name, address and telephone number of each applicant

Transferor:

DES Communications, Inc.
600 Mifflin Road
Pittsburgh, PA 15207
Telephone: (412) 306-7307
FRN: 0008757502

Transferee

Sunesys, LLC
202 Titus Avenue
Warrington, Pennsylvania 18976
Tel: (267) 927-2029
FRN: 0016325029

Section 63.04(a)(2) - The government, state, or territory under the laws of which each corporate or partnership applicant is organized

Transferor:

DES is a Pennsylvania Corporation.

Transferee:

Sunesys, LLC is a single-member Delaware Limited Liability Company.

Section 63.04(a)(3) - The name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed

Transferor:

Richard L. Osberg, III, Esq.
Ralph Minto, Jr., Esq.
Ralph Minto, Jr. & Associates
600 Grant Street
Suite 5686, US Steel Tower
Pittsburgh, PA 15219
Phone: (412) 201-5525
Fax: (412) 201-5526
rosberg@mintolaw.com

Transferee:

Jeffrey E. Rummel, Esquire
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
Phone: (202) 715-8479
Fax: (202) 857-6395
rummelj@arentfox.com

Section 63.04(a)(4) - The name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten (10) percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one (1) percent)

Transferor:

The following entities own 10% or more of the equity of DES Communications, Inc.:

DES Communications, Inc. is a Pennsylvania corporation whose sole shareholder is Robert Dagostino, a United States citizen whose business address is as follows:

600 Mifflin Road
Pittsburgh, PA 15207
Telephone: (412) 306-7307

Transferee:

Sunesys, LLC is a single-member Delaware Limited Liability Company whose sole member is its immediate parent InfraSource Incorporated.

InfraSource Incorporated is a Delaware corporation with its principal place of business located at 100 West Sixth Street, Suite 300, Media, Pennsylvania 19063. InfraSource is one of the largest specialty contractors serving utility transmission and distribution infrastructure in the United States.

InfraSource Services, Inc. (the Transferee) owns 100% of the equity of InfraSource Incorporated.

Section 63.04(a)(5) - Certification pursuant to §§1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 USC §853

Applicants certify that they are not is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

Section 63.04(a)(6) - A description of the transaction

The Parties have entered into a transaction pursuant to which the following will occur, in relevant part, upon approval of this Application, the satisfaction of all relevant conditions, and the completion of the transaction:

- Sunesys will acquire all or substantially all of the Pennsylvania assets of DES used in the provision of, or to support the provision of, the services for which DES is authorized in Pennsylvania as a Competitive Access Provider, including but not limited to underground and aerial fiber optic networks, machinery and equipment.
- Sunesys will acquire all rights under DES' Pennsylvania customer accounts and contracts.
- DES will assign to Sunesys all of DES' rights of way easements, fiber leases, network licenses and other agreements related to DES' provision of service to its customers.
- Upon completion of the transaction, Sunesys will become the service provider for DES' customers, and will provide service to DES' customers under Sunesys' existing authorization in Pennsylvania as a Competitive Access Provider. As set forth below, the proposed transfer of assets and customer accounts will be seamless and virtually transparent to DES' customers in that the transfer will involve no disruption, impairment, or other change in the facilities used to provide service to such customers, or the rates, terms and conditions of such service.

Section 63.04(a)(7) - A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area

Transferor:

DES is authorized to provide state-wide service as a Competitive Access Provider in Pennsylvania to commercial, governmental and non-profit customers in Pennsylvania. DES provides service in Pennsylvania, and does not provide telecommunications service in any other State. No affiliate of DES provides domestic telecommunications services.

Transferee:

Sunesys is currently authorized to provide state-wide competitive telecommunications services and private line services in the States of California, Delaware, the District of Columbia, Florida, Georgia, Illinois, Maryland, New Jersey, New York, North Carolina, Ohio and Pennsylvania. Sunesys currently provides service in California, Georgia, Maryland, New Jersey and Pennsylvania, consisting of the leasing of dedicated fiber optic facilities constructed and owned by Company to large commercial users and governmental entities, and the provision of managed metropolitan Ethernet network services, over fiber optic facilities constructed and owned by the Company, to school and library systems.³ An affiliate of Sunesys, Sunesys of Virginia, Inc. ("Sunesys VA"), is authorized to provide competitive telecommunications services in the Commonwealth of Virginia. Other than Sunesys VA, no other affiliate of Sunesys offers domestic telecommunications services.

³ An application to provide service in the State of Arizona is currently pending before the State Corporation Commission.

Section 63.04(a)(8) - A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. § 63.03 because, immediately following the transaction, (1) Applicants and their affiliates, as defined in Section 3(1) of the Communications Act ("Affiliates") combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their affiliates will provide competitive telephone exchange services or exchange services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and; (3) none of the Applicants is dominant with respect to any service. It is also noted that the Commission has concluded that "transfers of incumbent LEC local exchange assets are unlikely to raise the potential of competitive harm and therefore are eligible for presumptive streamlined treatment."⁴ Given that Applicants are nondominant carriers, the proposed transfer of assets from DES to Sunesys is even less likely to raise the potential of competitive harm than a comparable transfer of local exchange assets between ILECs.

Section 63.04(a)(9) - Identification of all other Commission applications related to the same transaction

No other FCC applications relate to the transaction that is the subject of this Application.

⁴ *Streamlining Order*, 17 FCC Rcd at 5532-33

Section 63.04(a)(10) - A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure

The Applicants do not request special consideration because no party to the transaction is facing imminent business failure.

Section 63.04(a)(11) - Identification of any separately filed waiver requests being sought in conjunction with the transaction

The Applicants do not seek any waivers in conjunction with this transaction.

Section 63.04(a)(11) - A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets

The Applicants respectfully submit that the proposed transaction is in the public interest and should be approved by the Commission for the following reasons:

- The transaction will be seamless and virtually transparent to DES' customers. After completion of the transaction, the same services will be offered by Sunesys to DES customers as are currently offered by DES, and at the same rates, terms and conditions. Sunesys will fulfill the contractual obligations of DES to such customers under the existing contracts between DES and such customers. In other words, there will be no disruption, impairment, or other change in the facilities used to provide service to such customers, or the rates, terms and conditions of such service.
- Provision of service to DES customers will be conducted under the supervision of the qualified technical and operational senior management team currently in place for Sunesys
- The transfer to Sunesys of the assets of DES, including its customer accounts and contract, will serve the public interest by enabling Sunesys to expand its operations on a geographic basis in a cost-effective manner, thereby enhancing its competitive position and ability to provide a diverse range of services to customers. By permitting Sunesys to strengthen its competitive position and accelerate the offering of innovative products and services at reasonable rates, the proposed transaction will ultimately improve competitive choices for purchasers of services in Pennsylvania. In short, the proposed transaction will directly benefit customers in Pennsylvania and elsewhere by enhancing the future provision of innovative, high quality telecommunications services to the public and thereby promoting competition in the telecommunications market.

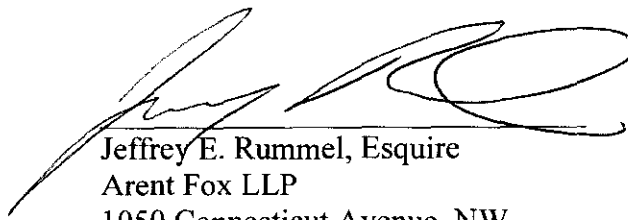
II. REQUEST FOR EXPEDITED PROCESSING

Parties request expedited approval of the instant Application to permit a timely completion and coordination of all aspects of this transaction. Expedited approval will minimize the uncertainty as to the continuing viability of the services currently being provided in the minds of customers which might otherwise result from lengthy delays in the review and approval process.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Applicants jointly request that the Commission grant this Joint Application and issue an Order approving the transfer of substantially all of the Pennsylvania assets of DES, including its customer accounts and contracts, to Sunesys, as described above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey E. Rummel', is written over a horizontal line.

Jeffrey E. Rummel, Esquire
Arent Fox LLP
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Washington, DC 20036
Phone: (202) 715-8479
Fax: (202) 857-6395
rummelj@arentfox.com

Attorneys for Sunesys, LLC

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600 Grant Street
Suite 5686, US Steel Tower
Pittsburgh, PA 15219
Phone: (412) 201-5525
Fax: (412) 201-5526

Attorneys for DES Communications, Inc.

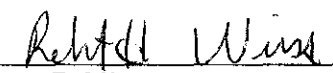
Dated: 5/29/2007

VERIFICATION

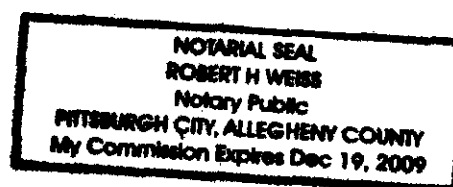
I, Robert Dagostino, hereby state that I am the Chief Executive Officer of DES Communications, Inc., and I am authorized to make this verification on its behalf; that I have read the foregoing Joint Application and know the contents thereof; and that the same are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.


Robert Dagostino

Subscribed and sworn to before me this 24 day of MAY, 2007.


Notary Public

My Commission expires: 12/19/9

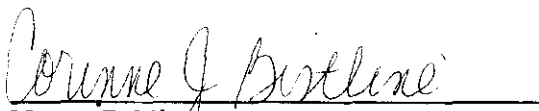


VERIFICATION

I, Lawrence P. Coleman, hereby state that I am the President of Sunesys, LLC, and I am authorized to make this verification on its behalf; that I have read the foregoing Joint Application and know the contents thereof; and that the same are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.


Lawrence P. Coleman

Subscribed and sworn to before me this 25th day of May, 2007.


Notary Public

My Commission expires: April 10, 2010

